

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LINDSEY SHEPARD, PAUL JONES,

Plaintiffs,

v.

DOUGLAS K. HOWARTH, ANTHONY
SCANZANI, CITY LINE AUTO SALES,
FREDERICK J. HANNA,

Defendants.

CIVIL ACTION NO. 1:14-cv-10301-RGS

DEFENDANT'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant, Frederick J. Hanna & Associates, P.C.¹ ("FJH"), hereby provides the following for its Answer to Plaintiffs' Second Amended Complaint ("SAC"):

A. Parties

1. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the SAC.

2. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the SAC.

3. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the SAC.

4. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the SAC.

5. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the SAC.

¹ Improperly identified here as Frederick J. Hanna.

6. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the SAC.

7. Admitted.

B. Jurisdiction

8. Paragraph 8 states a conclusion of law to which no response is required and is otherwise denied.

9. Paragraph 9 states a conclusion of law to which no response is required and is otherwise denied.

10. Paragraph 10 states a conclusion of law to which no response is required and is otherwise denied.

11. Paragraph 11 states a conclusion of law to which no response is required and is otherwise denied.

C. Facts

12. Paragraph 12 states a conclusion of law to which no response is required and is otherwise denied.

13. Paragraph 13 states a conclusion of law to which no response is required and is otherwise denied.

14. Paragraph 14 states a conclusion of law to which no response is required and is otherwise denied.

15. Denied.

16. Denied.

17. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the SAC.

18. Paragraph 18 states a conclusion of law to which no response is required and is otherwise denied.

19. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the SAC.

20. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the SAC.

21. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the SAC.

22. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the SAC.

23. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the SAC.

24. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the SAC.

25. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the SAC.

26. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the SAC.

27. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the SAC.

28. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the SAC.

29. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the SAC.

30. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the SAC.

31. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the SAC.

32. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the SAC.

33. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the SAC.

34. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the SAC.

35. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the SAC.

36. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the SAC.

37. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the SAC.

38. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the SAC.

39. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the SAC.

40. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the SAC.

41. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the SAC.

42. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the SAC.

43. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the SAC.

44. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the SAC.

45. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the SAC.

46. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the SAC.

47. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the SAC.

48. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the SAC.

49. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the SAC.

50. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the SAC.

51. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the SAC.

52. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the SAC.

53. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the SAC.

54. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the SAC.

55. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the SAC.

56. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the SAC.

57. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the SAC.

58. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the SAC.

59. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the SAC.

60. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the SAC.

61. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the SAC.

62. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the SAC.

63. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the SAC.

64. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the SAC.

65. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the SAC.

66. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the SAC.

67. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the SAC.

68. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the SAC.

69. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the SAC.

70. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the SAC.

71. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the SAC.

72. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the SAC.

73. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the SAC.

74. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the SAC.

75. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the SAC.

76. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the SAC.

77. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the SAC.

78. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the SAC.

79. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the SAC.

80. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the SAC.

81. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the SAC.

82. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the SAC.

83. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the SAC.

84. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the SAC.

85. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the SAC.

86. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the SAC.

87. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the SAC.

88. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the SAC.

89. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the SAC.

90. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the SAC.

91. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the SAC.

92. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the SAC.

93. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the SAC.

94. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the SAC.

95. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the SAC.

96. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the SAC.

97. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the SAC.

98. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the SAC.

99. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the SAC.

100. Denied.

101. Denied.

102. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 concerning Plaintiff's telephone numbers. Further answering, FJH states that the remaining allegation contained in paragraph 102 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

103. Denied.

104. Denied.

105. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the SAC.

106. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 of the SAC.

107. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107 of the SAC.

108. Denied.

109. Paragraph 109 merely purports to describe the Plaintiffs' causes of action and therefore no response is required. To the extent a response is required, FJH denies all allegations set forth in paragraph 109 of the SAC.

110. FJH states that the documents referenced in paragraph 110 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith. Further answering, FJH denies the remaining allegations set forth in paragraph 110 of the SAC.

111. FJH states that the documents referenced in paragraph 111 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith. Further answering, FJH denies the remaining allegations set forth in paragraph 111 of the SAC.

112. FJH states that the documents referenced in paragraph 112 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith. Further answering, FJH denies the remaining allegations set forth in paragraph 112 of the SAC.

113. FJH states that the documents referenced in paragraph 113 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith.

114. FJH states that the documents referenced in paragraph 114 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith.

115. FJH states that the documents referenced in paragraph 115 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith.

116. FJH states that the documents referenced in paragraph 116 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith.

117. Denied.

118. Denied.

119. Denied.

120. Paragraph 120 states a conclusion of law to which no response is required and is otherwise denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. FJH states that the documents referenced in paragraph 132 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith. Further answering, FJH denies the remaining allegations set forth in paragraph 132 of the SAC.

133. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 133 of the SAC.

134. Denied.

135. Denied.

136. Denied.

137. FJH states that the documents referenced in paragraph 137 of the SAC speak for themselves and FJH denies all allegations inconsistent therewith. Further answering, FJH denies the remaining allegations set forth in paragraph 137 of the SAC.

138. Denied.

139. Denied.

140. Paragraph 140 states a conclusion of law to which no response is required and is otherwise denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

148. Paragraph states a conclusion of law to which no response is required and is otherwise denied.

149. Denied.

150. Denied.

151. Paragraph 151 states a conclusion of law to which no response is required and is otherwise denied.

152. Paragraph 152 states a conclusion of law to which no response is required and is otherwise denied.

153. Denied.

154. Denied.

155. Denied.

156. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 156 of the SAC.

157. Denied.

158. Denied.

159. Denied.

160. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 160 of the SAC.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

166. Denied.

167. Paragraph 167 states a conclusion of law to which no response is required and is otherwise denied.

168. Paragraph 168 states a conclusion of law to which no response is required and is otherwise denied.

169. Paragraph 169 states a conclusion of law to which no response is required and is otherwise denied.

170. Paragraph 170 states a conclusion of law to which no response is required and is otherwise denied.

171. Paragraph 171 states a conclusion of law to which no response is required and is otherwise denied.

172. Paragraph 172 states a conclusion of law to which no response is required and is otherwise denied.

173. Denied.

174. Denied.

175. Denied.

176. Paragraph 176 states a conclusion of law to which no response is required and is otherwise denied.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Admitted.

182. Admitted.

183. Denied.

184. Denied.

185. Paragraph 185 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

186. Denied.

187. Denied.

188. Paragraph 188 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

189. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 189 of the SAC.

190. Paragraph 190 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

191. Paragraph 191 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

D. Count I – 93A

192. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 191 of the SAC as if fully set forth herein.

193. Paragraph 193 states a conclusion of law to which no response is required and is otherwise denied.

194. Paragraph 194 states a conclusion of law to which no response is required and is otherwise denied.

195. Denied.

196. Denied.

197. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 197 of the SAC.

198. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 198 of the SAC.

199. FJH is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 199 of the SAC.

200. Denied.

201. Denied.

202. Denied.

203. Denied.

E. Count II – Breach of Contract

204. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 203 of the SAC as if fully set forth herein.

205. The allegations set forth in paragraph 205 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 205 of the SAC.

206. The allegations set forth in paragraph 206 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 206 of the SAC.

207. The allegations set forth in paragraph 207 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 207 of the SAC.

208. The allegations set forth in paragraph 208 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 208 of the SAC.

209. The allegations set forth in paragraph 209 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 209 of the SAC.

F. Count III – Unjust Enrichment

210. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 209 of the SAC as if fully set forth herein.

211. The allegations set forth in paragraph 211 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 211 of the SAC.

212. The allegations set forth in paragraph 212 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 212 of the SAC.

G. Count 4 – Common Law Fraud

213. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 212 of the SAC as if fully set forth herein.

214. The allegations set forth in paragraph 214 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 214 of the SAC.

215. The allegations set forth in paragraph 215 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 215 of the SAC.

216. The allegations set forth in paragraph 216 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 216 of the SAC.

217. The allegations set forth in paragraph 217 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 217 of the SAC.

218. The allegations set forth in paragraph 218 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 218 of the SAC.

219. The allegations set forth in paragraph 219 of the SAC are not directed to FJH and therefore no response is required. To the extent a response is required, FJH denies the allegations set forth in paragraph 219 of the SAC.

H. Count 5 – Telephone Communications Act

220. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 219 of the SAC as if fully set forth herein.

221. Denied.

222. Denied.

223. Denied.

I. Count 6 – Telephone Communications Act

224. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 223 of the SAC as if fully set forth herein.

225. Denied.

226. Denied.

J. Count 7 – Telephone Consumer Protection Act

227. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 226 of the SAC as if fully set forth herein.

228. Denied.

229. Denied.

230. Denied.

231. Denied.

232. Denied.

233. Denied.

234. Intentionally left blank.²

K. Count 8 – Telephone Consumer Protection Act

235. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 234 of the SAC as if fully set forth herein.

236. Denied.

L. Count 9 - 940 CMR. 7.04³

237. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 236 of the SAC as if fully set forth herein.

238. Count 9 of Plaintiffs' SAC has already been dismissed by the Court, and thus no answer is required. To the extent an answer is required, FJH denies all allegations set forth in Paragraph 238 of the SAC.

239. Count 9 of Plaintiffs' SAC has already been dismissed by the Court, and thus no answer is required. To the extent an answer is required, FJH denies all allegations set forth in Paragraph 239 of the SAC.

² Plaintiffs' SAC omits paragraph 234.

³ This claim has already been dismissed by the Court. (DE #33).

240. Count 9 of Plaintiffs' SAC has already been dismissed by the Court, and thus no answer is required. To the extent an answer is required, FJH denies all allegations set forth in paragraph 240 of the SAC.

241. Count 9 of Plaintiffs' SAC has already been dismissed by the Court, and thus no answer is required. To the extent an answer is required, FJH denies all allegations set forth in paragraph 241 of the SAC.

242. Count 9 of Plaintiffs' SAC has already been dismissed by the Court, and thus no answer is required. To the extent an answer is required, FJH denies all allegations set forth in paragraph 242 of the SAC.

243. Count 9 of Plaintiffs' SAC has already been dismissed by the Court, and thus no answer is required. To the extent an answer is required, FJH denies all allegations set forth in paragraph 243 of the SAC.

M. Count 10 – Violation of Fair Credit Reporting Act

244. FJH repeats and incorporates herein by references its responses to paragraphs 1 through 243 of the SAC as if fully set forth herein.

245. Paragraph 245 states a conclusion of law to which no response is required and is otherwise denied.

246. Denied.

N. Count 11 – Violation of Fair Credit Reporting Act

247. Paragraph 247 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

248. Paragraph 248 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

249. Denied.

O. Count 12 – Violation of Section 621(a)(2) of the FCRA

250. Paragraph 250 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

251. Paragraph 251 of the SAC states a conclusion of law to which no response is required and is otherwise denied.

252. Denied.

AFFIRMATIVE DEFENSES

Upon information and belief and subject to further investigation and discovery, FJH alleges the following defenses without assuming the burden of proof where such burden is otherwise on the Plaintiffs:

FIRST AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction of over the TCPA claims asserted by the Plaintiffs.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are unintentional recipients of the alleged calls, and are therefore not a “called party” for purposes of the TCPA. Accordingly, Plaintiffs lack standing to assert the underlying claim.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' TCPA claims can only be brought in state court.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' SAC fails to state a claim upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs have failed to mitigate their damages and their claims herein should be barred or any recovery reduced in proportion to Plaintiffs' said failure to mitigate their damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs consented to receive any alleged prerecorded message calls and auto-dialed calls on their cell phone by providing their cell phone number to the creditor.

EIGHTH AFFIRMATIVE DEFENSE

FJH's telephone system is not an automatic telephone dialing system under 47 U.S.C. § 227(a) because the telephone system does not use a random or sequential number generator to store or produce or dial telephone numbers. Moreover, FJH's system entails human intervention.

NINTH AFFIRMATIVE DEFENSE

FJH states that if it violated the TCPA, which it denies, FJH had established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of the TCPA.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs have an established business relationship with FJH such that their claims under the TCPA are barred.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by the doctrine of waiver, laches, ratification, unclean hands, and estoppel.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert claims under the FDCPA, TCPA, FCRA or MDCRA.

THIRTEENTH AFFIRMATIVE DEFENSE

There is no private right of action under 940 C.M.R. 7.00, and Plaintiffs' claim under this section has already been dismissed by the Court.

FJH reserves the right to supplement these affirmative defenses as discovery proceeds.

FREDERICK J. HANNA
By Its Attorneys

/s/ Andrew M. Schneiderman

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617-213-7000
617-213-7001 (facsimile)

Dated: July 11, 2014

CERTIFICATE OF SERVICE

I, Andrew M. Schneiderman, hereby certify that the documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). A true and accurate copy of the foregoing document to counsel of record by first class mail, postage prepaid and electronic mail as follows:

Paul Jones
Lindsey Shepard
572 Park Street
Stoughton, MA 02072

/s/ Andrew M. Schneiderman

Andrew M. Schneiderman